marriage may be annulled for fraud, upon the husband's libel. *Anders* v. *Anders* (Mass.), 113 N. E. 203.

There would seem to be some justification for doubt as to the soundness of the view adopted by the court in this case. The supposition that an affirmative intention to leave her husband after the ceremony constituted fraud justifying an annulment of the marriage *ab initio* would seem unsound when we consider that a previous intention to desert the spouse does not affect the validity of a marriage performed in the manner prescribed by law. *Barnett* v. *Kimmell,* 35 Pa. St. 13. See also, *Todd* v. *Todd,* 149 Pa. St. 60, 24 Atl. 128, 17 L. R. A. 320.

Actual incapacity for marital intercourse, however, has always been a ground for annulment. *S.*——— v. *S.*———, 192 Mass. 194, 77 N. E. 1025, 116 Am. St. Rep. 240; *Payne* v. *Payne,* 46 Minn. 467, 24 Am. St. Rep. 240; *D*——— v. *A*———, 1 Rob. Ecc. 279. Inference of incapacity was then allowed as ground for annulment when marital intercourse was refused. *B*——— v. *B*———, (1901) P. 39. See *S*——— v. *A*———, (1878) 3 P. D. 72. The modern doctrine has gone still further, and the wilful and persistent refusal on the part of the wife to allow any marital intercourse—since it is as effective in defeating the objects for which matrimony exists as actual incapacity—is now, of itself, held to be a ground for annulment. *Dickenson* v. *Dickenson,* (1913) P. 198. *A fortiori,* a wilful and persistent refusal to perform all marital duties should furnish ground for annulment. Considerations of public policy lend themselves more strongly to this doctrine where, as in the principal case, there has been no consummation of the marriage. 1 BISHOP, MAR., DIV. & SEP., §§ 456, 461-466; *Smith* v. *Smith,* 171 Mass. 404, 50 N. E. 933, 41 L. R. A. 800, 68 Am. St. Rep. 440; *Svenson* v. *Svenson,* 178 N. Y. 54, 70 N. E. 120.

It seems, therefore, that this decision, if based on its true ground, would mark the acceptance in this country of the doctrine expounded by the court in *Dickenson* v. *Dickenson, supra,* and its application to a set of facts that lend themselves even more strongly to the reasoning embodied therein.

MORTGAGES—NEGOTIABILITY—SECURING NEGOTIABLE NOTE.—The defendant executed a negotiable note secured by a mortgage. The note was transferred to the plaintiff, in due course, by the payee; but without an assignment of the mortgage. Subsequently, the payee released the mortgage to a second mortgagee of the defendant. In a suit by the plaintiff to recover on the first mortgage the question arose as to whether the collateral mortgage passed as a negotiable instrument with the note it secured. *Held,* the mortgage was rendered negotiable and passed with the note. *First National Bank* v. *Guyton* (Fla.), 72 South. 460.

The decisions are in conflict as to whether the negotiability of the principal debt so affects the collateral security (itself a non-negotiable instrument) as to render it negotiable. The authorities agree that the mere transfer of the principal debt carries with it, in equity, an assignment of the mortgage by implication of law. But the difficult ques-

tion is whether the mortgage passes free from equities as does the negotiable instrument it secures. The majority of decisions are in favor of the doctrine that the collateral security is rendered negotiable by the note it secures, and passes with it free from equities. *Taylor* v. *American National Bank,* 63 Fla. 631, 57 South. 678, Ann. Cas., 1914A, 309; *Reeves* v. *Hayes,* 95 Ind. 521; *Kelley* v. *Whitney,* 45 Wis. 110, 30 Am. Rep. 697. See 1 VA. LAW REV. 622; 3 VA. LAW REV. 296. It is argued that when one finds upon record a mortgage securing a negotiable note he is thereby put on notice, and is bound to inquire whether the release was executed before or after the assignment and by persons having authority to make such discharge. *Mutual Benefit Life Ins. Co.* v. *Huntington,* 57 Kan. 744, 48 Pac. 19.

But some courts hold that the mortgage is not made negotiable by the note. *Bailey* v. *Smith,* 14 Ohio St. 396, 84 Am. Dec. 385; *Kleeman* v. *Frisbie,* 63 Ill. 482. And unless the transferee of the note takes an assignment of the collateral mortgage, he cannot recover on it where the rights of innocent third persons are affected. *Williams* v. *Jackson,* 107 U. S. 478. On principle, this would seem to be the better view. And, unless there is something in the mortgage itself showing an intent to secure not only the original payee of the note but any subsequent holder, the assignment of the note should carry no lien on the property covered by the mortgage. The mortgage is strictly a common law instrument, and the fact that it secures a negotiable note should no more change its character than should the mortgage detract from the negotiability of the note. See 3 VA. LAW REG. 310. Again, it would seem that the mortgage should pass subject to equities; on the ground that the holder of the note has two distinct securities to either of which he may resort, the mortgage being merely an additional and collateral security for the debt. See *Coles* v. *Withers,* 33 Grat. (Va.) 186. The two together do not constitute the negotiable security, but only the note; and the mortgage is and remains a mere common law instrument. *Bailey* v. *Smith, supra.* The doctrine that the collateral mortgage is not affected by the note is illustrated by the fact that after an action at law on the note has been barred by the statute of limitations the transferee may nevertheless recover on the mortgage. *Hanna* v. *Wilson,* 3 Grat. (Va.) 243. And the mortgagee may surrender the note to the maker and rely entirely on the mortgage as security for the debt. *Baldwin* v. *Norton,* 2 Conn. 161. See *Coles* v. *Withers, supra.*

Under modern registry laws, if the transferee is allowed to enforce the mortgage without having taken an assignment, and having same recorded, it can easily be seen how subsequent purchasers would be mislead. And it has been held, under such statutes, that where a mortgage secures a negotiable note, the transferee of the note, in due course, who fails to take an assignment of the mortgage will be postponed to a subsequent bona fide purchaser who relies upon and is deceived by the fraudulent release of the mortgage by the original payee. *Bank* v. *Harman,* 75 Va. 604; *Evans* v. *Roanoke Savings Bank,* 95 Va. 294, 28 S. E. 323, 3 VA. LAW REG. 705. It is more important to preserve the integrity of the records as evidence of title than the negotiability of liens

in the interest of holders of negotiable paper. See *Evans* v. *Roanoke Savings Bank, supra.*

NEUTRALITY LAWS—MILITARY EXPEDITION—WHAT CONSTITUTES.—Defendants conspired to destroy the Welland Canal in Canada, which was being used for the transportation of troops and military supplies by the king of Great Britain and Ireland, with which Prince the United States was then at peace. The conspirators were not organized as a military band; but they procured their supplies and had their base of operations in this country. *Held,* this constitutes a military expedition. *United States* v. *Tauscher,* 233 Fed. 597.

The federal courts have from time to time dealt with the question of military expeditions. The chief point of difference in their interpretation seems to be upon the degree of military training and organization which must be possessed by the body in order for it to be a military expedition. Some cases hold a high degree of military training and organization essential. Thus a body of men embarking with arms and ammunition for the United States were held to be embarking as individuals and not as a military expedition. *United States* v. *Pena,* 69 Fed. 983; *United States* v. *Hart,* 74 Fed. 724. But it has been held that an unorganized body of men, carrying arms and ammunition, who perfect a military organization before they reach their destination constitute a military expedition with the meaning of the statute. *Wiborg* v. *United States,* 163 U. S. 632. No particular number of men is necessary to complete the crime, nor is it necessary that such an expedition be completely organized, for the crime is completed by the first step taken in the organization or inception of such a body. *United States* v. *Ybanez,* 53 Fed. 536. It is not necessary that the men shall be drilled, uniformed or prepared for efficient service, nor organized as infantry, artillery, or cavalry. *United States* v. *Murphy,* 84 Fed. 609.

The right of the individual, as an individual, to leave this country for foreign lands with the intent of enlisting in a foreign army which is fighting against a country at peace with the United States is nowhere questioned. It is only where they join together and act in concert that they act unlawfully. *United States* v. *O'Brien,* 79 Fed. 900; *United States* v. *Murphy, supra.* It is unimportant to consider whether the expedition originated within the United States or beyond the seas, if it comes to this country *en route* to its destination. *Ex parte Needam,* Fed. Case No. 1008. Nor is it important that all the persons composing the military enterprise should be brought into contact with each other in the United States. *United States* v. *Murphy, supra.*

PAYMENT—APPLICATION—TO WHICH OF SEVERAL ACCOUNTS.—The defendant owed the plaintiff several debts, some being on open accounts and one being evidenced by a negotiable note. The debtor made several payments which totalled enough to pay the note, but which were not applied to any specific debt. In a suit to recover on the note, payment was pleaded. *Held,* the plaintiff can recover, as the payments will be applied most advantageously to the creditor. *Porter* v. *Watkins* (Ala.), 71 South. 687.